

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

CHARLES A. WINSTON,
ADC #84733

PLAINTIFF

v.

No. 2:12CV00237 JLH-JTK

DEXTER PAYNE, et al.

DEFENDANTS

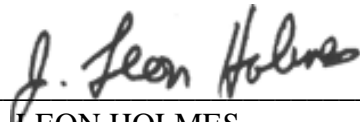
ORDER

The Court has received proposed findings and recommendations from United States Magistrate Judge Jerome T. Kearney. After review of the proposed findings and recommendations and the timely objections, as well as a *de novo* review of the record, the Court adopts the proposed findings and recommendations in their entirety. With respect to the objections filed by the defendants, the Court adds these brief comments. Although the defendants may be correct as to the purpose of a supplemental pleading as that term is used in the Federal Rules of Civil Procedure, Winston's motion to supplement is appropriately regarded as a motion to amend, which is, in effect, how Magistrate Judge Kearney treated it. With respect to the larger issue relating to the merits of the claim, the arguments advanced by the defendants can best be considered by the Court in the context of a motion for summary judgment. It may be that the undisputed facts, as shown by a properly supported motion for summary judgment, confirm the accuracy of the arguments on the merits made by the defendants. The issue presently, however, is not whether the defendants are entitled to summary judgment but whether the plaintiff has stated a claim upon which relief can be granted. After a *de novo* review, the Court agrees with Magistrate Judge Kearney that the plaintiff has stated a claim.

IT IS, THEREFORE, ORDERED that the defendants' motion for judgment on the pleadings is granted in part and denied in part. Document #14. The motion for judgment on the pleadings is

granted with respect to the plaintiff's claims against them in their official capacities, and those claims are dismissed. The defendants' motion for judgment on the pleadings is denied in all other respects. The plaintiff's motion to supplement the complaint is granted as a motion for leave to amend, and the proposed amendment is deemed filed concurrently with the entry of this Order. Document #16. The defendants have already filed an answer and they need not file another one, though they may choose to do so.

IT IS SO ORDERED this 3rd day of May, 2013.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE